

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TONY HARRIS,

Plaintiff,

-against-

CITY OF NEW YORK, WARDEN C-95, C.O. MILLER,
C.O. BARNES, CO. GAINES, ADMINISTRATION
SEGREGATION MEDICAYION ESCORT (JOHN DOE),
C.O. MEADOWS, C.O. BONILLA, C.O. GREEN,

Defendants.

**ANSWER TO THE
AMENDED COMPLAINT**

07 CV 7894 (RJS)

Jury Trial Demanded

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Defendants City of New York and Warden Michael Hourihane, by their attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, for their answer to the amended complaint, respectfully allege, upon information and belief, as follows:¹

1. Deny the allegations set forth in paragraph "I" of the amended complaint and all of its subparts, including the attached page labeled "Additional Sheet of Paper for Defendants", except admit that plaintiff purports to name the parties as stated therein.

2. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "II" of the amended complaint and all of its subparts, including the attached page labeled "Statement of Claim D. Cont.".

3. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "III" of the amended complaint.

¹ In addition to defendants City and Hourihane, the amended complaint purports to name "C.O. Miller", "C.O. Barnes", "C.O. Gaines", "Administration Segregation Medcayion [sic] Escort (John Doe)", "C.O. Meadows", "C.O. Bonilla", and "C.O. Green" as defendants. However, on information and belief these individuals have not been served with a copy of the summons and amended complaint and are therefore not defendants in this action at this time.

4. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "IV" of the complaint, except admit that the Anna M. Kross Center has a grievance procedure.

5. Deny the allegations set forth in paragraph "V" of the complaint, except admit that plaintiff purports to seek relief as stated therein.

6. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "VI" of the complaint and all of its subparts.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

7. The amended complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

8. Defendants have not violated any rights, privileges or immunities secured to plaintiff by the Constitution or laws of the United States or the State of New York or any political subdivision thereof, nor have defendants violated any act of Congress providing for the protection of civil rights.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE:

9. At all times relevant to the acts alleged in the complaint, defendants acted reasonably in the proper and lawful exercise of their discretion.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

10. Any injury alleged to have been sustained resulted from plaintiff's own culpable or negligent conduct and/or the intervening conduct of third parties and was not the proximate result of any act of the defendants.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:

11. Plaintiff's claims may be barred, in whole or in part, by his failure to exhaust his administrative remedies as required by the Prison Litigation Reform Act, 42 U.S.C. § 1997e.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:

12. Plaintiff's claims may be barred, in whole or in part, by the applicable statute of limitations period.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:

13. Plaintiff's claims may be barred, in whole or in part, because plaintiff failed to comply with all conditions precedent to suit.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE:

14. Plaintiff's claims may be barred, in whole or in part, by the doctrines of res judicata and/or collateral estoppel.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE:

15. Warden Hourihane had no personal involvement in the incidents alleged by plaintiff.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE:

16. To the extent plaintiff challenges the outcome of a disciplinary hearing, plaintiff was afforded due process.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE:

17. The actions of any correction officers involved in the alleged incidents were reasonable.

WHEREFORE, defendants the City of New York and Warden Michael Hourihane request judgment dismissing the complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
 August 5, 2008

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for Defendants
100 Church Street
New York, New York 10007
(212) 788-1575

By: /s/
 Bradford C. Patrick
 Assistant Corporation Counsel
 Special Federal Litigation Division

To: BY MAIL
 Anthony Harris, #241071799
 Plaintiff Pro Se
 Anna M. Kross Center
 18-18 Hazen St.
 E. Elmhurst, NY 11370

DECLARATION OF SERVICE BY FIRST CLASS MAIL

I, Bradford C. Patrick declare, pursuant to 28 U.S.C. § 1746, under the penalty of perjury that on **August 5, 2008** I served the annexed **Answer** upon the following individual by depositing a copy of the same, enclosed in a first class postpaid properly addressed wrapper, in a post office/official depository under the exclusive care and custody of the United States Postal Service, within the State of New York, directed to the said plaintiff pro se at the address set forth herein, being the address designated by said plaintiff for that purpose, to wit:

Anthony Harris, #241071799
Plaintiff Pro Se
Anna M. Kross Center
18-18 Hazen St.
E. Elmhurst, NY 11370

Dated: New York, NY
 August 5, 2008

/s/
Bradford C. Patrick
Assistant Corporation Counsel
Special Federal Litigation

Index No. 08 CV 7894 (RJS)

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-against-

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MEADOWS, C.O BONILLA, C.O GREEN,

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ANSWER TO THE AMENDED COMPLAINT

MICHAEL A. CARDOZO

Corporation Counsel of the City of New York

Attorney for Defendants

100 Church Street

New York, N.Y. 10007

Of Counsel: Bradford C. Patrick

Tel: (212) 788-1575

NYCLIS No.2008-015916

Due and timely service is hereby admitted.

New York, N.Y., 200.....

..... Esq.

Attorney for.....